

567-07/MEU

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LOUIS DREYFUS CORPORATION,  
Plaintiff,

**07 CV 6622 (WHP)**

**ANSWER with CROSS-CLAIM**

- against -

M/V CMA CGM CORTES, her engines,  
Boilers, tackle, etc., ALPHA SHIP MANAGEMENT  
GMBH & Co., KG, ALPHA SHIP GMBH & CO,  
KG MS'NEPTUN', COMPAÑIA SUD AMERICANA  
DE VAPORES S.A. (C.S.A.V.)

Defendants.

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Defendant ALPHA SHIP GMBH & CO KG MS'NEPTUN' (hereinafter "ALPHA"),  
through its attorneys Freehill, Hogan & Mahar, LLP, responds to the Complaint of Plaintiff  
LOUIS DREYFUS CORPORATION, as follows:

**ANSWERING THE FIRST CAUSE OF ACTION**

1. DENIES knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 1 of the Verified Complaint.
2. DENIES knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 of the Verified Complaint.

3. ADMITS defendant ALPHA SHIP GMBH & CO. was the owner of the CMA CGM CORTES, but except as so specifically admitted, denies each and every remaining allegation contained in Paragraph 3 of the Verified Complaint.

4. DENIES the allegations contained in Paragraph 4 of the Verified Complaint.

5. DENIES the allegations contained in Paragraph 5 of the Verified Complaint.

6. DENIES the allegations contained in Paragraph 6 of the Verified Complaint.

7. DENIES the allegations contained in Paragraph 7 of the Verified Complaint.

8. DENIES the allegations contained in Paragraph 8 of the Verified Complaint.

**FIRST AFFIRMATIVE DEFENSE**

9. The Complaint or parts of it fails to state a claim upon which relief can be granted as against answering defendant ALPHA.

**SECOND AFFIRMATIVE DEFENSE**

10. Defendant ALPHA is not liable to plaintiff on the causes of action alleged in the complaint.

**THIRD AFFIRMATIVE DEFENSE**

11. If there was any loss and/or damage to cargo as alleged in the complaint it was occasioned by causes for which the defendant ALPHA is exonerated under the United States Carriage of Goods by Sea Act, Title 46 U.S.C.A. § 1300, et seq.

**FOURTH AFFIRMATIVE DEFENSE**

12. If this Honorable Court finds that the plaintiff has suffered damages to cargo for which defendant ALPHA is liable, said damages must be limited pursuant to 46 U.S.C.A. § 1304(5).

**FIFTH AFFIRMATIVE DEFENSE**

13. If there was any loss of and/or damage to cargo as alleged in the complaint, defendant ALPHA is not liable to the plaintiff by reasons of the provisions contained in the bill(s) of lading, contract of carriage, charter party, applicable tariffs, special contract, or dock receipt.

**SIXTH AFFIRMATIVE DEFENSE**

14. If there was any loss and/or damage to cargo as alleged in the complaint, it was occasioned by causes for which the defendant ALPHA is exonerated under the Harter Act, Title 46 U.S.C.A. § 190, et seq.

**SEVENTH AFFIRMATIVE DEFENSE**

15. Defendant ALPHA puts plaintiff to its proof of compliance with the provisions for giving of notice and the commencement of suit as provided for in the aforesaid bill(s) of lading and in the United States Carriage of Goods by Sea Act, 1936.

**EIGHTH AFFIRMATIVE DEFENSE**

16. (A) Due diligence was used to make the carrying vessel(s) seaworthy and to secure that they were properly manned, equipped and supplied, and to make the holds and other parts of the ships in which the goods were carried safe and fit for the reception, carriage and preservation in accordance with the provisions of the United States Carriage of Goods by Sea Act, 1936 and the aforesaid bill(s) of lading.

(B) Accordingly, if the goods sustained any loss or damage while they were on board the carrying vessel(s), due to any unseaworthiness of the vessel(s), which is denied, defendant ALPHA is not liable therefore.

**NINTH AFFIRMATIVE DEFENSE**

17. Plaintiff's claim is barred by the statute of limitations contained in both the aforesaid bill(s) of lading and the United States Carriage of Goods by Sea Act, 1936 and/or the Doctrine of Laches.

**TENTH AFFIRMATIVE DEFENSE**

18. Any damages sustained by the plaintiff, as alleged in the complaint, were proximately, directly, and solely caused by the negligent acts of third persons over whom defendant ALPHA had and have no direction or control.

**ELEVENTH AFFIRMATIVE DEFENSE**

19. Plaintiff knowingly and intentionally assumed any and all risks inherent in the shipment(s) of the goods at issue by sea, which is a complete bar to recovery.

**TWELFTH AFFIRMATIVE DEFENSE**

20. Any injuries that may have been sustained by plaintiff, as alleged in the complaint, occurred as a direct result of plaintiff's own negligent conduct, and not by any negligence of defendant ALHPA and as such plaintiff is barred from recovery in this action.

**THIRTEENTH AFFIRMATIVE DEFENSE**

21. Plaintiff is guilty of culpable conduct in the events giving rise to the claims now asserted in plaintiff's complaint, and its recovery, if any, must be diminished in proportion thereto.

**FOURTEENTH AFFIRMATIVE DEFENSE**

22. Plaintiff herein has failed to mitigate its damages.

**FIFTEENTH AFFIRMATIVE DEFENSE**

23. The forum is inconvenient and the complaint should be dismissed pursuant to the Doctrine of Forum Non Conveniens.

**SIXTEENTH AFFIRMATIVE DEFENSE**

24. The action, or part thereof, is founded upon improper venue and/or should be transferred pursuant to 28 U.S.C. § 1404.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

25. The terms of the bill(s) of lading, tariff and/or other governing contracts between the parties require that this matter be heard in a forum other than this Court.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

26. This Court lacks personal jurisdiction of the defendant ALPHA.

**NINETEENTH AFFIRMATIVE DEFENSE**

27. Plaintiff has failed to make proper service of process upon defendant ALPHA.

**TWENTIETH AFFIRMATIVE DEFENSE**

28. This Answer and Cross-Claim is made without waiver of any jurisdictional defenses or rights to arbitrate or proceed in another forum that may exist between the parties.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

29. Defendant ALPHA as owner of the vessel has no liability as the cargo was never laden onboard.

**AS AND FOR A CROSS-CLAIM AGAINST DEFENDANT  
COMPANIA SUD AMERICANA DE VAPORES S.A. (C.S.A.V.)**

30. This is a claim under the Court's Admiralty and Maritime Jurisdiction, and under the Court's diversity and pendent jurisdiction.

31. That at all times mentioned hereafter ALPHA SHIP GMBH & CO KG was and is a corporation duly organized and existing pursuant to the laws of a foreign country.

32. That defendant COMPANIA SUD AMERICANA DE VAPORES S.A. (C.S.A.V.) was and is a corporation organized and existing under the laws of a foreign country.

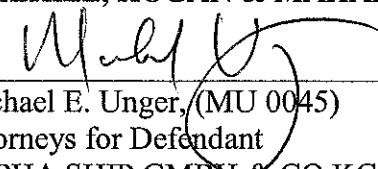
33. That if plaintiff suffered any loss and/or damage, which is denied, the loss and/or damage was caused solely by the negligence, breach of contract (express or implied) breach of warranty (express or implied) and/or the fault of defendant C.S.A.V.

34. That if defendant ALPHA is found responsible for any of the loss and/or damage sustained by the plaintiff herein, defendant ALPHA is entitled to indemnification and/or contribution in whole or in part from co-defendant C.S.A.V. for said losses and/or damages including costs and reasonable counsel fees.

**WHEREFORE**, Defendant ALPHA SHIP GMBH & CO KG MS'NEPTUN' demands judgment dismissing the complaint herein, and awarding ALPHA SHIP GMBH & CO KG MS'NEPTUN' costs, fees, including reasonable attorneys' fees and disbursements of this action, and further demands judgment against co-defendant C.S.A.V. for all sums which may be recovered by plaintiff against the defendant ALPHA SHIP GMBH & CO KG MS'NEPTUN', as well as fees, disbursements of this action, and such other and further relief as to the Court may seem just and proper.

Dated: New York, New York  
March 14, 2008

Yours truly,  
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